

BILL ANALYSIS

Senate Research Center
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S.B. 892
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 892 improves provisions of the Property Code related to property owners' associations. S.B. 892 provides enforcement authority to county attorneys relating to restrictive covenant violations. S.B. 892 clarifies definitions in Chapter 207 in order to conform with Chapter 209 of the Property Code. S.B. 892 also requires that additional information be provided by the owner, including a resale certificate issued by the association and a current copy of the restrictive covenants at the time of contract or conveyance of the property. S.B. 892 provides for clear and specific duties for associations relating to records retention and records requests. S.B. 892 prohibits foreclosure of an association's assessment lien if the debt securing the lien is less than 90 days delinquent and provides specific guidance to associations regarding annual meetings

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the chapter heading for Chapter 203, Property Code, to read as follows:

CHAPTER 203. ENFORCEMENT OF PROVISIONS RELATING TO LAND USE
RESTRICTIONS OR PROPERTY OWNERS' ASSOCIATIONS IN CERTAIN COUNTIES

SECTION 2. Amends Section 203.003, Property Code, as follows:

Sec. 203.003. New heading: ENFORCEMENT AUTHORITY OF COUNTY ATTORNEY. Authorizes the county attorney to take certain actions relating to enforcement, including recovering a financial penalty not to exceed \$250 for each violation of this title by a property owner' association or a property owner.

SECTION 3. Amends Section 207.001, Property Code, to redefine "dedicatory instrument," "property owners' association," "restrictive covenant," "regular assessment," "special assessment," and "subdivision"; define "residential subdivision" ; and deletes existing definition of "restrictions."

SECTION 4. Amends Section 207.002, Property Code, as follow:

Sec. 207.002. APPLICABILITY. Provides that this chapter applies only to a subdivision to which Chapter 209 applies. Deletes existing text relating to property owners' associations that are entitled to levy regular or special assessments.

SECTION 5. Amends the heading to Section 207.003, Property Code, to read as follows:

Sec. 207.003. DELIVERY OF SUBDIVISION INFORMATION TO OWNER;
RESALE OF PROPERTY.

SECTION 6. Amends Section 207.003, Property Code, by amending Subsection (a) and adding Subsection (f), as follows:

(a) Requires the property owners' association, not later than the 10th day after the date a written request for subdivision is received from an owner, owner's agent, or title insurance company or its agent acting on the owner's behalf, to deliver to the owner, owner's agent, or title insurance company or its agent a current copy of the restrictive covenants, rather than restrictions, applying to the subdivision and a resale certificate that complies with Subsections (b) and (f). Deletes existing text relating to rules and bylaws of the property owners' association.

(f) Requires an owner that sells the owner's property in the subdivision, except as provided by Section 207.004 and before executing a sales contract or conveying the property, to provide the purchaser with certain documents.

SECTION 7. Amends Section 209.005, Property Code, by adding Subsections (c), (d), (e), and (f), as follows:

(c) Provides that records of an owner's payment or nonpayment of regular assessments and special assessments, fees, fines, or any other sums that have been charged to an owner are not subject to inspection by any other owner who is not a member of the association's board or an owner's representative or to production in a legal proceeding, unless certain criteria are met.

(d) Provides that salary or payroll records of an association employee that disclose the employee's amount of salary or income are not subject to inspection by an owner who is not a member of the association's board or an owner's representative unless a court orders the inspection.

(e) Requires the association to retain certain for certain specified time periods.

(f) Provides that this section does not apply to a property owners' association that is subject to Chapter 552 (Public Information), Government Code.

SECTION 8. Amends Chapter 209, Property Code, by adding Section 209.0051, as follows:

Sec. 209.0051. ASSOCIATION AND BOARD MEETINGS. (a) Requires a property owners' association to meet at least once each year. Authorizes, unless the declaration, restrictions, bylaws, or articles of incorporation provide otherwise, a special meeting of the association to be called by the president of the board, a majority of the board, or by owners having at least 10 percent of the votes in the association.

(b) Requires that meetings of the association and the board to be open to the owners, subject to the right of the board to adjourn a meeting of the board and reconvene in closed executive session to consider certain actions and confidential matters. Requires the general nature of any business to be considered in executive session to first be announced at the open meeting.

(c) Authorizes a meeting of the board to be held by any method of communication, including electronic and telephonic, if certain conditions are met, unless the declaration, restrictions, bylaws, or articles of incorporation provide otherwise. Authorizes the board, without a meeting, to act by unanimous written consent of all members of the board if certain conditions are met.

(d) Requires a notice of a regular or special meeting of the association to be given as provided by the restrictions, bylaws, or articles of incorporation or, if those instruments do not provide for notice, requires notice to be given to each owner in the same manner in which notice is given to members of a nonprofit corporation under Section A, Article 2.11, Texas Non-Profit Corporation Act (Article 1396-2.11, V. T. C. S.).

(e) Requires a notice of a meeting of the board to be given as provided by the restrictions, bylaws, or articles of incorporation or, if those instruments do not provide for notice, requires notice to be given to each owner in the same manner in which notice is given to members of a nonprofit corporation under Section B, Article 2.19, Texas Non-Profit Corporation Act (Article 1396-2.19, V. T. C. S.).

(f) Requires an association, on written request of an owner, to inform the owner of the time and place of the next regular or special meeting of the association or board. Requires the association, if the association representative to whom the request is made does not know the time and place of the meeting, to promptly obtain the information and disclose it to the owner or inform the owner where that information may be obtained.

(g) Provides that this section does not apply to an association subject to Chapter 551 (Open Meetings), Government Code.

SECTION 9. Amends Section 209.009, Property Code, as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. Prohibits a property owners' association from foreclosing a property owners' association's assessment lien if the debt securing the lien consists solely of debt that is not more than 90 days delinquent. Provides that the 90-day delinquency period does not apply to an association in which an assessment is due on a monthly basis.

SECTION 10. Amends Chapter 209, Property Code, by adding Sections 209.012 and 209.013, as follows:

Sec. 209.012. CONFLICTS OF INTEREST. Prohibits a person who is a member of the board of property owners' association or related within the third degree by consanguinity or within the second degree by affinity to a member of the board from being compensated for providing legal representation or management services to the association.

Sec. 209.013. SUSPENSION OF VOTING PRIVILEGES. Prohibits a property owners' association from suspending an owner's voting privileges in the association because of an owner's overdue assessments or failure to cure a violation of a deed restriction unless certain criteria are met.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2005.